IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06..07..2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Writ Appeal No.788 of 2004
and
W.A.M.P. No.1448 of 2005

A.Anthonidoss ... Appellant/ Second Respondent

Vs.

1. The Management of
Rani Mangammal Transport Corporation
Rep. by its Managing Director
Dindigul. 624 002 ... Respondent/ Writ Petitioner

2. The Presiding Officer
Labour Court, Trichy. ... Respondents/ Ist Respondent

The Writ Appeal is preferred under Clause 15 of the Letters Patent as against the Order of the learned single Judge dated 20.02.2004 made in W.P.No.10165 of 1996 Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in its award in I.D.No.280/1995 dated 11.12.1995 and quash the same.

For Appellant : Mr.AR.L.Sundaresan, SC
for Ms.AL.Ganthimathi

For 1st Respondent : No representation

WEB COPY

JUDGMENT

(Judgment of the Court was delivered by
ELIPE DHARMARAO, J.)

This writ appeal is directed against the order of the learned single Judge dated 20.02.2004 and made in W.P.No.10165 of 1996 wherein and by which the learned Judge set aside the Award dated 11.12.1995 passed by the Labour Court in I.D. No.198 of 1993, which

https://hcservices.ecourts.gov.in/hcservices/

was re-numbered as I.D. No.280 of 1995, filed against the order of removal of the appellant from service.

2. The second respondent in the main writ petition, who joined as a Conductor in the petitioner Corporation, was suspended from service on the allegation of having received bribe and enquiry was conducted after framing of charges in which he was found guilty, subsequent to which, punishment of dismissal from service was imposed on him. As against the same, he raised an Industrial Dispute in I.D. No.198 of 1993 on the file of the Labour Court, Madurai, which was transferred and re-numbered as I.D. No.280 of 1995 on the file of the Labour Court, Tiruchirapalli [hereinafter referred to as 'I.D. No.280 of 1995]. The petitioner Management filed a counter requesting that the validity of the domestic enquiry may be decided as a preliminary issue and for an opportunity to lead additional evidence in case the Labour Court came to the conclusion that the domestic enquiry was vitiated.

3. The Labour Court has itself gone into the matter and on re-appreciation of the entire evidence adduced before the Enquiry Officer and also the Enquiry Report, came to the conclusion that domestic enquiry was not conducted in a fair and proper manner and held that non-employment of the petitioner was not justifiable. As against the Award dated 11.12.1995 made in I.D. No.280 of 1995, the Management filed the writ petition.

4. The learned Judge, on consideration of the contentions raised by both sides, following the judgment of the Supreme Court reported in AIR 1963 SC 295 [The Management of Ritz Theatre (Private) Ltd. vs. Its Workman], which was followed by a Division Bench of this Court in its decision reported in 1984 WLR 165 [India forge and Drop Stamping Ltd. vs. The Presiding Officer, Additional Labour Court, Madras and another], held that the Labour Court ought to have given the petitioner Management an opportunity to adduce additional evidence and that since the respondent has been reinstated in service without prejudice to the rights of the parties in the writ petition, his interest will also not suffer if the matter is remitted for giving the petitioner an opportunity to adduce additional evidence and a time frame is fixed for disposal and accordingly, set aside the Award passed by the Labour Court and remanded the matter to the Labour Court to dispose of I.D. No.280 of 1995 after giving an opportunity to the parties to adduce additional evidence and pass final orders within three months from the date of receipt of the copy of the order. Aggrieved at the same, the Management has preferred the present appeal.

5. We have heard Mr.AR.L.Sundaresan, learned Senior Counsel leading Ms.AL.Ganthimathi, learned counsel appearing for the appellant and have perused the records.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. Learned Senior Counsel appearing for the appellant submitted that the Labour Court, considering the whole issue on merits, arrived at the conclusion that non-employment of the appellant was not justifiable and further holding that the domestic enquiry was vitiated, ordered for reinstatement of the appellant with continuity of service and backwages. Therefore, the learned Judge should not have remanded the matter back to the Labour Court for giving opportunity to the Management for adducing additional evidence, which is contrary to law and prayed for interference of this Court.

7. A perusal of the Award would show that the Labour Court mainly relied on Ex.M.1, report of the Checking Inspector, which was marked on the side of the Management. The relevant portion in paragraph 9 of the Award passed by the Labour Courts reads as follows:

> "In Ex.M.1, it is stated that the conductor of the private bus gave the money and the petitioner received the amount and placed in the ticket book without unfolding it, but in the enquiry, M.W.1 stated that the petitioner was caught red handed while the money was in his hand".

Therefore, it is clear that in view of the above, the Labour Court came to the conclusion that on doubt only the Enquiry officer concluded that the charges were proved and held that the dismissal of the appellant from service on the basis of the enquiry report was not proper.

8. Further, the Labour Court, after re-appreciating the evidence adduced before the Enquiry Officer, was satisfied that there is a contradiction in the evidence of the Management with regard to Ex.M.1 and passed the Award setting aside the dismissal of the appellant and ordered for his reinstatement with continuity of service and backwages. The Labour Court has also observed that the domestic enquiry conducted was not fair and proper. On the other hand, it could be understood that it is not the view of the Labour Court that the enquiry was not conducted properly but the evidence was not properly appreciated by the enquiry Officer before submitting his report and findings. Even otherwise, the judgment of the Supreme Court on which the learned Judge relied on, held that if the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, the Tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. Therefore, based on the evidence available on record or materials available on record, the Labour Court has passed the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

order. Therefore, we are not able to appreciate the reason given by the learned Judge in remitting the matter and we are unable to agree with the same while the Award was passed considering the merits of the dispute. We are also satisfied that remitting the matter by the learned Judge for adducing evidence is unwarranted.

9. In the light of the above, the appellant succeeds and the writ appeal is allowed setting aside the order of the learned Judge and confirming the Award passed by the Labour Court. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gri

To

1. The Presiding Officer
Labour Court
Trichy

2. The Section Officer,
VR Section,
High Court, Madras.

1 cc to M/s. A.L. Gandhimathi, Advocate, Sr. 40764

W.A.No.788 of 2004

AD (CO)
kk 23/7

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/